

Department- Initiated Refunds

Trina Griffin
NCGA Research Division
Revenue Laws Study Committee
December 1, 2010

When Must the Department Initiate a Refund?

- When it knows the taxpayer has overpaid.
- The Department must know within the statute of limitations period.

When Does the Department Know?

- When computer system processes return and identifies an overpayment.



- Internal emails indicate Individual and Corporate Income Tax Divisions followed this practice.

- When a DOR employee identifies, reviews, and approves an overpayment.



- Current agency policy pursuant to oral legal opinion given in 2009.

Summary

- No written policy.
- The Department reports that refunds of overpayments were handled inconsistently.
- The Department sought opinion of AG during efforts to clean up backlog of review items.
- AG provided oral legal opinion, which has been adopted as agency policy.
- The Department states legislative action is needed to issue remaining refunds, but has not indicated why or how the law needs to be changed.

Observations

- There has been no law change requiring a change in the way statute is applied.
- The practice described in the emails is more favorable to taxpayers than the current policy, which makes refunds dependent on Department workload and resources.
- The statute is subject to more than one interpretation as evidenced by the inconsistent practice cited by the Department.
- The basis for the AG's oral legal opinion that the law requires an employee review within the limitations period is unknown.

Options

- No legislative recommendation
 - Committee agrees with current Department policy.
 - Committee finds that statute may be interpreted by Department to allow refunds without legislative change.
 - Committee needs more information in order to make a recommendation.
- Recommend legislation
 - Committee disagrees with current Department policy.



Former Statute

§ 105-266. Overpayment of taxes to be refunded with interest.

(a) Refund. – If the Secretary discovers that a taxpayer has overpaid the correct amount of a tax, that overpayment shall be refunded to the taxpayer as soon as possible together with any applicable interest....

...

(c) Statute of Limitations. - ...

(1) General Rule. – No overpayment shall be refunded...if the discovery is not made ...within three years after the date set by the statute for the filing of the return or within six months after the payment of tax alleged to be an overpayment, whichever is later.

Current Statute

§ 105 241.7. Procedure for obtaining a refund.

(a) Initiated by Department. – The Department must refund an overpayment made by a taxpayer when the Department processes a return and finds all of the following:

(1) The statute of limitations for obtaining a refund has not expired.

(2) The amount shown due on the return is not correct.

(3) The correction of the amount due shows that the taxpayer has overpaid the tax.